

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Tony L. Hammond; and
Nanci E. Langley

Competitive Product Prices
Bilateral Agreement Between United States
Postal Service and Posten Norge AS (MC2010-34)
Negotiated Service Agreement

Docket No. CP2011-69

NOTICE AND ORDER CONCERNING FILING
OF AN ADDITIONAL INBOUND COMPETITIVE MULTI-SERVICE
AGREEMENTS WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT

(Issued August 24, 2011)

I. INTRODUCTION

On August 18, 2011, the Postal Service filed a notice, pursuant to 39 CFR 3015.5, that it has entered into an additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 agreement.¹ The Notice concerns a bilateral agreement for inbound competitive services with Posten Norge AS (Norway

¹ Notice of United States Postal Service of Filing Additional Functionally Equivalent Agreement, August 18, 2011 (Notice); see also Docket Nos. MC2010-34 and CP2010-95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546).

Post Agreement) that the Postal Service seeks to add to the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product.

In Order No. 546, the Commission approved the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product and a functionally equivalent agreement, Koninklijke TNT Post BV and TNT Post PakketSERVICE Benelux BV (TNT Agreement). The Postal Service asserts that its filing demonstrates that the Norway Post Agreement fits within the Mail Classification Schedule (MCS) language in Governors' Decision No. 10-3 originally filed in Docket Nos. MC2010-34 and CP2010-95. Notice at 2.

In support of its Notice, the Postal Service filed four attachments as follows:

- Attachment 1—an application for non-public treatment of materials to maintain redacted portions of the agreement and supporting documents under seal;
- Attachment 2—a redacted copy of Governors' Decision No. 10-3 that establishes prices and classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators agreements, proposed MCS language, formulas for prices, certification of the Governors' vote and certification of compliance with 39 U.S.C.3633(a);
- Attachment 3—a redacted copy of the Norway Post Agreement; and
- Attachment 4—a certified statement required by 39 CFR 3015.5(c)(2).

Norway Post Agreement. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5 and in accordance with Order No. 546. The Postal Service states that the inbound air parcel post competitive services in the Norway Post Agreement conform to the proposed MCS language for Inbound Multi-Service Agreements with Foreign Postal Operators 1. The Postal Service states it will notify the mailer of the effective date within 30 days after all necessary regulatory approvals have been received. *Id.* The agreement provides that the parties will mutually agree on the effective date. *Id.* at 3; Attachment 3 at 1. The parties intend for the agreement to

become effective on October 1, 2011, and to remain in effect for 1 year with the option for renewal for another year. *Id.* at 2; Attachment 3 at 1.

Functional equivalence. The Postal Service asserts that the Norway Post Agreement and the TNT Agreement incorporate the same cost and market characteristics. Notice at 3. It states that the TNT Agreement includes similar terms and conditions, *e.g.*, is an agreement with a foreign postal operator and conforms to a common description. *Id.* Additionally, the Postal Service contends that the Norway Post Agreement is similar in cost characteristics with the TNT Agreement other than certain minor adjustments, such as expression of costs in different currencies, which are slight modifications that do not affect the agreement's functional equivalence. *Id.* It maintains that because of the limited changes, the cost characteristics are essentially the same as the TNT Agreement.²

The Postal Service identifies specific terms that distinguish the instant agreement from the existing agreement. These distinctions include the term, products, services, applicable law and dispute resolution methods. *Id.* at 3-4.

Despite some minor differences, the Postal Service asserts that the Norway Post Agreement is functionally equivalent to the TNT Agreement previously filed. *Id.* at 4.

In its Notice, the Postal Service maintains that certain portions of the agreement, prices, and related financial information should remain under seal. *Id.* at 2; Attachment 1.

The Postal Service concludes that the Norway Post Agreement complies with 39 U.S.C. 3633 and is functionally equivalent to the TNT Agreement. Notice at 4. Therefore, it requests that the Commission add the Norway Post Agreement to the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product. *Id.*

² The Postal Service's Notice refers to the TNT Agreement as the "baseline agreement." *Id.*

II. NOTICE OF FILING

The Commission establishes Docket No. CP2011-69 for consideration of matters raised by the Postal Service's Notice.

The Commission appoints James F. Callow to serve as Public Representative in this docket.

Comments. Interested persons may submit comments on whether the Postal Service's filings in the captioned docket are consistent with the policies of 39 U.S.C. 3632, 3633 or 39 CFR part 3015. Comments are due no later than August 31, 2011. The public portions of this filing can be accessed via the Commission's website (<http://www.prc.gov>).

III. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Docket No. CP2011-69 for consideration of the matters raised in this docket.
2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments by interested persons in this proceeding are due no later than August 31, 2011.
4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove
Secretary